



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Dennis Proulx
102 Pendleton Beach Rd.
Laconia, NH 03246

Re: 102 Pendleton Beach Rd., Laconia
Wetlands File #2006-10

ADMINISTRATIVE ORDER
No. WD 06-020

May 2, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Dennis Proulx pursuant to RSA 482-A:22. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Dennis Proulx is an individual having a mailing address of 102 Pendleton Beach Rd, Laconia, NH 03246.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III, provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Mr. Proulx is the owner of property located at 102 Pendleton Beach Rd. in Laconia, New Hampshire, more particularly identified on City of Laconia Tax Map 148 as Lot 15 ("the Property").

5. Belknap Landscape Company, Inc., ("BLC") is a New Hampshire Corporation registered to do business in New Hampshire and having a mailing address of 160 Lily Pond Road, Gilford, NH 03249.

6. On January 3, 2006, DES received a Permit-by-Notification Form ("PBN") from Mr. Proulx to "repair an existing retaining wall in kind." The PBN was filed for PBN project type #12, "Repair or replacement of an existing retaining wall."

7. The PBN plan, prepared by Watermark Marine Construction, contained notes which stated "Existing Retaining Wall To Be Repaired In-Kind Approximately 80 Linear Feet. No Change In Size, Location Or Configuration Is Proposed Under This Permit Request." The plan also contained construction sequence notes which stated that the existing retaining wall was to be removed as well as photographs documenting the location and condition of the existing retaining wall.

8. Mr. Proulx initialed and signed the PBN certifying that, among other things, "I have obtained, read, and retained a copy and agree to abide by the conditions and requirements in the Project Specific Booklet(s)" and "I understand that completion of the PBN process does not preclude DES from taking enforcement action if DES later determines...that I have failed to follow criteria or conditions."

9. Condition #1 for PBN Project #12, as set out in Project Booklet #12, requires the completed and signed PBN form to be posted on site prior to commencement of the project.

10. Condition #2 for PBN Project #12 states that "All work shall be conducted in accordance with plans dated __/__/__*, submitted with the PBN Form (*record the date of the plan here for future reference)."

11. Condition #3 for PBN Project #12 states that "Repair shall maintain existing size, location and configuration."

12. On January 10, 2006, DES deemed the PBN form to be complete.

13. On March 21, 2006, DES personnel conducted an inspection of the Property in response to a complaint. During the inspection, DES personnel found the following:

a. Construction personnel from BLC were in the process of constructing a new granite retaining wall lakeward of the existing retaining wall.

b. The original retaining wall was still intact and the new wall was measured to be constructed at distances varying from approximately 1' to 4' lakeward of the existing retaining wall. Backfill material had been added to fill in the void between the new and old walls.

c. The PBN was not posted on site.

14. DES personnel left a written wetlands inspection report with the job foreman from BLC informing him that the work was in violation and requesting that they immediately stop work, that they leave the site stable and monitor erosion controls, and that DES will follow up in writing with further action. The inspection report was signed by DES personnel and the job foreman.

15. On March 30, 2006, DES sent correspondence to Mr. Proulx informing him of the inspection findings, requesting that he voluntarily refrain from conducting additional work, install siltation/erosion controls, and notifying him that additional enforcement documentation will follow.

16. On April 3, 2006, DES personnel received a call from a representative of Watermark Marine Construction Co., notifying DES that they were filing an application on Mr. Proulx's behalf to retain the new wall after-the-fact.

17. On April 5, 2006 DES personnel inspected the property. During the inspection DES personnel found possible violations of the Comprehensive Shoreland Protection Act, RSA 483-B involving construction of the house and decks.

18. On April 5, 2006, DES personnel spoke with Mr. Proulx to notify him of the inspection findings.

19. On April 7, 2006, DES received an after-the-fact Standard Dredge and Fill application (Wetlands Bureau File #2006-796) to retain the new retaining wall in unpermitted location.

20. Mr. Proulx has been the subject of previous DES compliance action (under Wetlands Bureau File # 1997-575) for construction of an unpermitted beach and was subject to investigation for deficiencies of the CSPA involving cutting of the woodland buffer on waterfront property on Dockham Shore Road in Gilford, New Hampshire.

21. Mr. Proulx has also been the subject of a previous DES compliance investigation (under Wetlands Bureau File #2001-774) for filling wetlands without a permit for development of a building lot on Dale Road in Hooksett, New Hampshire.

22. Mr. Proulx also applied for and obtained a permit for this Property (under Wetlands Bureau File #2005-01741) to remove an existing seasonal dock and construct a permanent piling pier, ice cluster, and seasonal boat lift.

D. DETERMINATION OF VIOLATIONS

1. Dennis Proulx has violated RSA 482-A, I, by construction of approximately 80 linear feet of retaining wall lakeward of the existing retaining wall and shoreline in contradiction to the approved PBN and associated plan.

2. Dennis Proulx has violated RSA 482-A, I, by failing to comply with PBN condition #1.
3. Dennis Proulx has violated RSA 482-A, I, by failing to comply with PBN condition #2.
4. Dennis Proulx has violated RSA 482-A, I, by failing to comply with PBN condition #3.

E. ORDER

Based on the above findings, DES hereby orders Dennis Proulx as follows:

1. **Immediately cease and desist** all construction activities associated with the new wall construction except as specifically ordered in E.2 through E.5 below.
2. **Within 5 days of the date of this Order** install and maintain appropriate erosion/siltation controls in all areas of the Property subject to potential erosion as well as a turbidity boom should the lake level rise prior to implementation of restoration activities. Photographs shall be submitted to DES immediately following installation documenting compliance with this provision of the Order.
3. **Within 10 days of the date of this Order** retain an environmental professional to prepare a removal/restoration plan and to supervise implementation of the removal/restoration in accordance with Items E.4 and E.5 below. Submit a letter of retention from the environmental professional to DES documenting compliance with this provision of the Order.
4. **Within 45 days of the date of this Order** submit to DES for approval, a removal/restoration plan to remove all portions of the newly constructed granite retaining wall and associated fill placed lakeward of the original retaining wall. The removal/restoration plan shall be prepared by an environmental professional and stamped by a licensed land surveyor, and include the following:
 - a. Existing conditions and land topography, with dimensions and drawn to scale, including the surveyed limits of full lake elevation, the location of the original retaining wall, and the location of the unpermitted granite retaining wall and associated fill;
 - b. A plan for removing all portions of the newly placed retaining wall and associated fill back to the limit of the original retaining wall and for placing material out of jurisdiction;
 - c. A detailed method of sediment, erosion, and turbidity control (turbidity boom, silt fence, haybales, etc.); and
 - d. A proposed removal schedule and construction sequence listing equipment and methods for accomplishing removal/restoration, as well as an anticipated restoration compliance date.
5. **Implement** the removal/restoration plan proposed in accordance with Item E.4, above only after receiving written approval, and as conditioned, by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Darlene Forst
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: dforst@des.state.nh.us

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

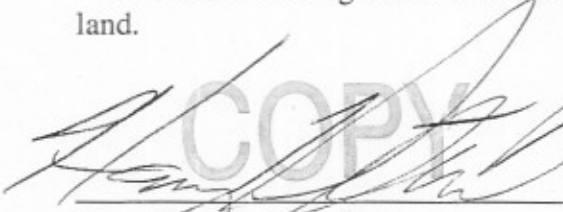
Appealing the Order does automatically relieve Dennis Proulx of the obligation to comply with the Order.

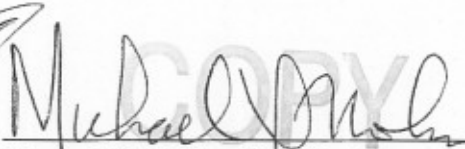
G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13, and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Proulx remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Proulx's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the DES, Comprehensive Shoreland Protection Program, for investigation of possible violations of RSA 483-B.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR:

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Jeff Blecharczyk, DES Shoreland Compliance Coordinator
Laconia Conservation Commission
Belknap Landscape Company, Inc.
Watermark Marine Construction

Any person aggrieved by this Order may request that DES reconsider this determination within 30 days of the date of this Order. The request for reconsideration must comply with Wt. 203:01(d) (copy attached), and will be processed in accordance with Wt. 203:01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 483-A:10, if the Council may not consider any ground that is not set forth in the request for reconsideration.

Appealing the Order does not automatically relieve Dennis Frosch of the obligation to comply with the Order.

C. Other Provisions

Please note that RSA 483-A:12 and RSA 483-A:13, and 483-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations set in this Order, as well as for failing to comply with the Order's terms. Mr. Frosch remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Frosch's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

A copy of this Order, this notice is being referred to the DES Comprehensive Shoreland Protection Program, for investigation of possible violations of RSA 483-B.

This Order is being entered in the Belknap County Registry of Deeds so as to run with the land.

Michael P. Nolan, Commissioner
Department of Environmental Services

James T. Shaw, P.E., Director
Water Division

Control Number: